

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 25, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1550-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN E. TRIPLETT

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: LEE S. DREYFUS, JR., Judge. *Affirmed.*

NETTESHEIM, J. John E. Triplett appeals from a judgment of conviction for theft (intentionally retaining the possession of the moveable property of another) contrary to § 943.20(1)(a) and (3)(a), STATS., and an order denying his motion for postconviction relief. The judgment was entered following Triplett's entry of an *Alford* plea.¹ On appeal, Triplett seeks to withdraw his plea

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

based on his claim that the record before the circuit court at the time of his plea did not provide a sufficient factual basis supporting the charged offense. We conclude that the record as made at the plea hearing established a factual basis for Triplett's *Alford* plea. We therefore affirm the judgment and the order denying postconviction relief.

On November 28, 1995, Triplett was stopped and arrested by a city of New Berlin police officer following reports that the passenger in his vehicle, Delphine Santana, had attempted to cash forged checks at two branches of the Landmark Credit Union. During the stop, the police found stolen identification listed to Amelia Summerville in Triplett's vehicle. Triplett accused the police of planting the evidence in his vehicle.

A three-count criminal complaint was filed on November 29, 1995. Counts one and two charged Santana with uttering forged checks. The third count charged Triplett with theft based on the stolen identification recovered from his vehicle. On February 16, 1996, Triplett entered an *Alford* plea to the theft charge. In addition, the State filed a one count read-in list which charged Triplett as a party to one of the uttering charges against Santana.

The trial court determined that Triplett entered his plea voluntarily, knowingly and intelligently and that a factual basis for the plea existed. The court stated:

Based upon the statements made here by Mr. Triplett, the facts as contained in the original complaint filed November 29th of 1995, and I'd note there is now a—a victim impact statement from Amelia Summerville on file, also the contents, enter plea and waiver of rights form that he has acknowledged, I'm satisfied there is a sufficient factual basis for me to accept the plea and to enter a guilty finding.

Triplett was sentenced to one hundred days in the Waukesha county jail to be served concurrent with a sentence stemming from another conviction not relevant to this case.

On April 11, 1997, Triplett filed a motion to withdraw his plea. Triplett argued that the circuit court did not have a sufficient factual basis to accept his plea to the charge of theft. A hearing was held on May 6, 1997, at which the circuit court denied the motion. The court stated:

I'm satisfied based upon the record presented at the time the plea was entered there was strong proof of guilt available to the state. There is very little question if that was indeed presented to a jury that the reasonable likelihood was, in fact, the jury would have found Mr. Triplett guilty. Mr. Triplett acknowledged he understood that and that was one of the bases for his entering the Alford type plea was the likelihood the jury would find him guilty on that evidence.

Triplett now renews his postconviction argument on appeal.

A court can only accept a plea withdrawal following sentencing if it is necessary to correct a manifest injustice. See *State v. Rock*, 92 Wis.2d 554, 558-59, 285 N.W.2d 739 741-42 (1979). One type of manifest injustice occurs when the trial court fails to establish a sufficient factual basis that the defendant committed the offense charged. See *White v. State*, 85 Wis.2d 485, 488, 271 N.W.2d 97, 98 (1978). A sufficient factual basis in an *Alford* plea exists only if there is strong proof of guilt that the defendant committed the crime to which the defendant pleads. See *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970); *State v. Garcia*, 192 Wis.2d 845, 857-58, 532 N.W.2d 111, 115-16 (1995). When reviewing an *Alford* plea, the circuit court must go to the same lengths in reviewing the facts to sustain a negotiated plea as a nonnegotiated plea. See *State v. Smith*, 202 Wis.2d 21, 27-28, 549 N.W.2d 232, 235 (1996). However, as with

guilty or no contest pleas, a factual basis for a plea exists in an *Alford* situation if an inculpatory inference can be drawn even if an exculpatory inference could also be drawn. See *State v. Spears*, 147 Wis.2d 429, 435, 433 N.W.2d 595, 598 (Ct. App. 1988).

Ultimately, a request to withdraw a plea is addressed to the trial court's discretion. See *id.* at 443, 433 N.W.2d at 601. However, the underlying question as to whether a factual basis for the plea exists is subject to different standards of review depending on how the factual basis is presented to the trial court. When the State presents testimony to support the factual basis, we apply the clearly erroneous test. See *Broadie v. State*, 68 Wis.2d 420, 423, 228 N.W.2d 687, 689 (1975). However, in this case, the factual basis for the plea was derived solely from documents of record—the criminal complaint, the read-in list, the victim impact statement, and the voluntary plea and waiver form. Therefore, we need not give deference to the findings made by the trial court and we review this issue de novo. See *State ex rel. Sieloff v. Golz*, 80 Wis.2d 225, 241, 258 N.W.2d 700, 705 (1977) (when reviewing documentary evidence, the court “need not afford a trial court’s findings any special deference”).

The purpose of a factual basis is to assure that the defendant in fact committed the crime charged. See *Smith*, 202 Wis.2d at 25, 549 N.W.2d at 234. In an *Alford* setting, the factual basis must establish strong proof of guilt because the evidence must be strong enough to overcome the defendant’s “protestations” of innocence. See *Smith*, 202 Wis.2d at 27, 549 N.W.2d at 235. “Although strong proof of guilt is less than proof beyond a reasonable doubt, it is clearly greater than what is needed to meet the factual basis requirement under a guilty plea.” *Id.* (citation omitted). With these principles in mind, we turn to Triplett’s argument

that the factual basis offered by the State in this case did not exist to show a strong proof of guilt that he had committed the crime of theft.

We begin by disavowing the trial court's statement that Triplett's statements at the plea hearing supported a factual basis for the plea. We have examined the transcript of this hearing and we see nothing in Triplett's remarks which contributed to a factual basis for his plea. Rather, his remarks traveled to the voluntariness of his plea. Triplett in no way implicated himself or made statements supporting a factual basis for the plea.

The trial court also looked to the victim impact statement of Amelia Summerville. While this statement does not directly implicate Triplett in the theft of Summerville's property, it does establish that a theft occurred and that Summerville had not given Triplett permission to possess her property.

That brings us to the criminal complaint and the read-in list, the critical documents in this factual basis inquiry. We first note that the complaint did not charge Triplett with the actual removal and carrying away of Summerville's property. Therefore, the factual basis did not have to establish that charge. Rather, Triplett was charged with *intentionally retaining possession of her property*. Our factual basis inquiry is conducted from that perspective.

The criminal complaint jointly named Triplett and Santana as codefendants. Although the offenses charged against each were different, all the charges stemmed from the events of November 28, 1995, when the police stopped Triplett's vehicle as a result of the reports which linked Triplett's vehicle with that of the person (later identified as Santana) who had attempted to pass the forged checks. Moreover, the read-in list charging Triplett as a party to one of Santana's uttering of a forged document charges entitles us to consider the allegations

against Santana as part of the factual basis for the charge against Triplett. Those allegations establish that Triplett and Santana were jointly involved in the uttering of forged documents by using false identification.

The complaint also establishes that the police discovered Summerville's stolen credit cards, social security card and credit union deposit account card in Triplett's vehicle. Coupled with the forgery activity which Santana and Triplett were committing on the day they were arrested, an inculpatory inference is that Triplett illegally possessed Summerville's property. Another inculpatory inference is that Triplett possessed these stolen items for purposes of creating and negotiating forged documents, the very kind of activity which he and Santana were engaged in on the day in question.

Finally, the complaint also establishes that Triplett accused the police of planting the evidence. While police misconduct is not beyond the realm of possibility, Triplett's accusation in this case strains credulity. One would think that if Triplett would have accused anyone of placing the stolen identification materials in his vehicle, it would have been Santana—the person who was engaged that very day in criminal activity which often involves the possession of such materials. Yet, Triplett accused the police. Rather than supporting his claim of innocence, we conclude that Triplett's statement blaming the police infers a guilty mind and supports a factual basis for the charge.

The totality of these inculpatory inferences leads us to conclude that a factual basis establishing strong evidence of guilt was established in this case. As such, Triplett did not show a manifest necessity that his plea should be withdrawn. We conclude that the trial court did not err in rejecting Triplett's request to withdraw his *Alford* plea.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

